Fact Report: Transport at II-16-18. AT&T's recent acquisition of a 40 percent interest in Teligent for $3 billion is just the latest vote of confidence in this technology.

Despite these understatements, these maps show a substantial amount of CLEC fiber alternatives in the ground. Atlanta and Miami, with multiple installed CLEC fiber networks are not comparable to rural cities with no CLEC fiber. CLEC fiber extends well beyond the very largest markets in BellSouth's region. For example, Birmingham, Nashville, Memphis, New Orleans, Orlando and Raleigh all have broad CLEC fiber networks. CLEC wireless transport facilities provide additional competitive alternatives to incumbent LEC transport or to fill in gaps in existing CLEC networks.

The real question before the Commission is how best to acknowledge the presence of the local transport alternatives that all parties admit exist. Commission precedent supplies the way to reflect these variations in a workable format. The Commission's competitive analysis precedents group markets based on the competitive similarity of the choices available in those markets.[26] Under that standard approach, markets with CLEC alternatives would be grouped together and treated one way, while markets without alternatives would be treated another.

The Commission has already laid the groundwork for a transport solution in its *Special Access* and *Switched Transport* orders.[27] Those orders found that a three zone

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[26] *In the Application of NYNEX Corporation, as transferor, and Bell Atlantic Corporation, as Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, *Memorandum Opinion and Order*, 12 FCC Rcd 19985, 20016-7 (1997) (*Bell Atlantic/NYNEX Order*).

[27] *In the Matter of Expanded Interconnection with Local Telephone Company Facilities and Amendment of the Part 69 Allocation of General Support Facility Costs*, CC Docket Nos. 91-141 and 92-222, *Report and Order and Notice of Proposed Rulemaking*, 7 FCC Rcd 7369, 7450 (1992) (*Special Access Order*); *In the Matter of Expanded*

approach for special access and switched transport reasonably reflected the availability of competitive transport. Those zones were based on the same cost and traffic density factors that directly influence the construction of competitive local transport. Several interexchange carriers argued in the *Special Access* proceeding that "special access was identical to dedicated transport and directly related to common transport." BellSouth attached state maps to its Comments showing these zones and MSAs.

The fact that these zones also reasonably reflect competitive local transport alternatives, as predicted by the interexchange carriers, is demonstrated by the maps in Attachment A. In Zone 1 cities in BellSouth's region generally have multiple CLEC fiber transport alternatives. These networks generally extend throughout the applicable zone. For example, BellSouth has been able to map 5 separate CLEC fiber networks in Atlanta. Among CLEC transport alternatives in Atlanta not mapped are Media One's fiber network that extends throughout Atlanta. Other CLECs have fiber in Atlanta, or are planning to build new facilities. *UNE Fact Report* at Appendix B: CLEC Fiber. Of course, wireless transport is another available transport option. Memphis, Nashville, South Florida and other cities have extensive CLEC fiber networks in the ground.

In Zone 1 areas competitive alternatives are clearly present and, based on the success of multiple CLECs of varying sizes in constructing local fiber facilities, it is evident that self-provisioning is economically feasible and practically possible. Self-provisioning may take the 10-12 months estimated by AT&T for constructing fiber facilities, or the considerably shorter time to install wireless facilities, but in either case,

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Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141 (*Transport Phase I*), *Second Report and Order and Third Notice of Proposed Rulemaking*, 8 FCC Rcd 7374, 7423-25 (1993) (*Switched Transport Order*).

entry would occur in substantially less time than the two year threshold that the *Merger Guidelines* use to gauge whether competitive entry is timely.

Zone 2 cities like Huntsville, Alabama also have CLEC local fiber facilities in the ground. Doubtless, there is additional CLEC fiber, and, of course, wireless alternatives provide additional local transport options. Certainly, in any Zone 2 city in which CLECs have fiber facilities, CLECs would be unimpaired without an entitlement to unbundled incumbent LEC transport.

By one way of comparison, AT&T's interstate long distance services were deregulated when its market share fell below 70%. Using FCC Telecommunications Relay Service data for 1997, CLEC/CAP announced revenue growth rates for 1998, and conservative assumptions about incumbent LEC DS1 and higher revenues, it can be shown that incumbent LEC's share of the DS1 and higher special access market is below 70% nationwide. By the same standard by which AT&T was deregulated, DS1 and higher interoffice transport is a competitive market today nationwide. Obviously CLEC growth would not be impaired without unbundled transport if CLECs are able today on a nationwide basis to turn to self-provision interoffice transport services to this degree. Mandating that incumbent LECs provide DS1 and DS3 interoffice transport services under the Commissions TELRIC pricing principle would not remedy any impairment.

The Commission should pay special attention to wireless local transport alternatives. Although fiber facilities receive most of the attention, wireless facilities represent a technology that creates viable competitive alternatives to incumbent LEC transport. There are at least five firms with essentially nationwide wireless coverage in

the 28 and 38 GHz range.[28] Wireless local systems can be activated in 90 to 120 days. Because wireless systems are moveable, the sunk costs of deploying on particular routes are low. The spectrum supports high capacities. Wireless carriers are offering wholesale services to extend the reach of local transport rings. The Commission has acknowledged that this spectrum is used to bypass incumbent LEC service.[29]

As a competitive entry vehicle wireless technology is powerful. The *Merger Guidelines* would view wireless technology as providing a present market alternative to incumbent LEC transport facilities. Wireless could quickly fill in any gaps in CLEC networks, or quickly create an alternative transport network. The availability of wireless transport alone should weigh heavily against any claim to impairment without access to unbundled incumbent LEC transport facilities.

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[28] *UNE Fact Report:Transport* at II-16-18 and III-10-12.

[29] *See, e.g., In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, RM 7249, ENF-87-14, *Notice of Proposed Rulemaking and Notice of Inquiry*, 6 FCC Rcd 3259, n.3 (1991).

C. Transport Does Not Generally Meet Section 251(d)(2)'s Requirements For Unbundling

The factual record demonstrates that in many markets there are alternatives to incumbent LEC transport. CLECs agree that transport alternatives exist and that they are using them, but have refused to identify where those alternatives exist. The question CLECs have chosen to present is whether the Commission should unbundle all incumbent LEC transport because CLECs may be impaired without access to it in some areas.

Unbundling at cost-based prices has costs, as spelled out in BellSouth's Comments at pages 7-10. *See also* Declaration of Alfred E. Kahn at ¶ 22 (unbundling at TELRIC prices substantially discourages incumbent LEC and CLEC investment and innovation). Shoehorning transport markets with multiple alternative transport networks into a box with markets that have no alternatives makes no sense. It would depart from past Commission practice, and would not be faithful to the Court's requirement that the Commission look to the presence of alternative facilities in making its judgments under section 251(d)(2). A three zone approach is one way to reasonably reflect the presence of competitive alternatives and the ability of CLECs to self-provision local transport in at least some geographic markets. Analyzing whether CLECs would be impaired without unbundled incumbent LEC transport at cost-based prices in each of these zones leads to the conclusion that CLECs would not be impaired in zone 1 and zone 2 areas, but may be in the rural zone 3 areas. Thus, the Commission would order unbundling and create an entitlement to cost-based, TELRIC prices, for local transport in zone 3 areas only.[30]

[30] Of course, under section 271, BellSouth would continue to provide unbundled local transport to CLECs, but would be able to price this transport at market rates. As BellSouth explained in its Comments, section 251 establishes a higher necessary and

VI. SWITCHING

CLECs are also split on whether they would be impaired without access to unbundled incumbent LEC switching at cost-based pricing. Facilities-based CLECs tend not to argue that switching should be unbundled under section 251. Even CLECs that argue that incumbent LEC switching must be unbundled base their argument on the need for unbundled, cost-based switching to serve the "mass market," thereby conceding that CLEC competition for larger businesses would remain unimpaired without cost-based unbundled incumbent LEC switching. The fact that many CLECs see no need for unbundling incumbent LEC switching anywhere suggests that self-provisioning is a real option and that therefore switching does not meet section 251(d)(2)'s impair standard.

The uncontroverted facts about switching set out in the *UNE Fact Report* demonstrate that alternatives to incumbent LEC switching exist throughout the country, and that self-provisioning is relatively quick and easy. Treating section 251(d)(2) as the limiting standard it is would provide for, at most, limited unbundling of incumbent LEC switches in rural areas.

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impair standard that CLECs must meet to obtain the cost-based pricing entitlement in section 252.

A. Facility-Based CLECs Do Not Argue That Incumbent LEC Switching Meets Section 251(d)(2) Requirements For Unbundling

ALTS, the trade association of facilities-based CLECs, does not request that incumbent LEC switching be unbundled. ALTS Comments at 35. Likewise, many facilities-based CLECs have adopted the view that they do not need access to unbundled incumbent LEC switching. *See, e.g.,* Allegiance Comments at 17-20, Media One Comments at 11, Cox Comments at 4-5, Joint Comments of e.spire and Intermedia Communications at 20-21; Covad Comments at 29-30; Rhythms Comments at 27-28 ("it appears that because a new entrant can in many circumstances buy and use electronic switching systems on comparable terms and conditions from several different commercial vendors, a competitor's ability to provide service would, in general, not be materially diminished by an inability to gain access to an ILEC's switch").

MGC, a small CLEC that provides service to residential and smaller business customers "does not need to acquire switching capability from the ILEC." MGC Comments at 31. MGC explains that [c]ompetitors are not dependent on the ILEC for switching," and that switching does not meet section 251(d)(2)'s impair standard.[31] *Id.* Focal Communications is one CLEC that makes an affirmative case that incumbent LEC switches cannot be generally unbundled under section 251(d)(2).

[31] Because MGC has deployed its own switches, it can obtain SS7 signaling in the open market. MGC notes that "SS7 signaling is made generally available on a national basis and in a cost-effective manner. Therefore, MGC believes that competition will not be prejudiced if the Commission decides that SS-7 signaling should no longer be classified as a UNE." MGC Comments at 31. BellSouth Comments made it clear that CLECs that use their own switches, as most do, regularly use alternative signaling providers. BellSouth Comments at 76. These CLECs would not be unimpaired without access to incumbent LEC signaling under section 251(d)(2).

> the Commission should make advancement of facilities-based competitive investment its primary principle ... and it should apply this principle by declaring that unbundled switching will not be available in areas where competitors have demonstrated the ready availability of switching through self-provisioning.

Focal Comments at 1-2. Focal explains that "the very existence of switch-based CLECs suggests that the 'impair' standard may not be met for ILEC switching." Focal Comments at 2. As described below, the fact that 167 CLECs have deployed over 700 switches show that switch-based CLECs are not market outliers. Focal goes on to note that "of equal importance - requiring switch-based CLECs to compete with unbundled ILEC switching would be completely inconsistent with the Act's goal of encouraging facilities-based competition." Focal Comments at 2, 5; Kahn Declaration at ¶ 22.

Focal does suggest that incumbent LEC switching be unbundled where there are no alternatives. Focal Comments at 4. Of course, this would entail defining geographic markets for switching, and requiring unbundling where no CLEC alternative was present. Focal Comments at 2, 4; Qwest Comments at 31(suggesting MTAs be used to define geographic market). Focal would define geographic markets for switching by using LERG coordinates. CLEC presence would be tested by whether a CLEC had an NXX for that area in the LERG. This is a reasonable approach to defining geographic markets for switching and evaluating whether a CLEC can provide switching in that market. [32]

[32] Focal Communications' test for whether CLEC opportunities would be impaired without cost-based access to incumbent LEC switching essentially replicates the rate exchange area test proposed in the *UNE Fact Report*. Focal Communications Comments at 1-2, 4-5; *UNE Fact Report: Switching* at I-3. Those tests are conservative, like BellSouth's, and yield similar results.

B. The UNE Fact Report Demonstrates That Alternatives To Incumbent LEC Switching Exist And That Self-Provisioning Is Competitively Effective

The *UNE Fact Report* presents a compelling story on CLEC switch deployment that explains why facilities-based CLECs do not generally argue that their opportunities to compete would be impaired without cost-based pricing for unbundled incumbent LEC switching. The availability of incumbent LEC switching is not the gate on the business plans of these CLECs.

The *UNE Fact Report* shows that 167 different CLECs had deployed over 700 switches by March, 1999.[33] CLEC switches cover the top 50 MSAs and well beyond. Switch prices continue to fall even as switch technology improves. Manufacturers are actively courting CLEC business, and designing switches specifically to meet their needs. Switches can be purchased for as little as $100,000 and deployed in as little as 40 *days*.[34] There are no technical limitations on the geographic reach of a switch, and AT&T has observed that a switch can certainly reach any customer within a 125 mile radius of the switch location. CLECs are taking advantage of improved switching technology. For

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[33] *UNE Fact Report: Switching* at I-1. This number is supported by ALTS's calculation that as of a few months earlier, December, 1998, CLECs had deployed 667 switches.

[34] In its comments, AT&T suggests 9 to 12 months for switch deployment. AT&T Comments at 91 *citing* Pfau Affidavit at ¶ 14. Unfortunately, the Pfau affidavit contains not a single fact to support its bare assertion that switch deployment takes 9 to 12 months. On the other hand, the *UNE Fact Report* collects a number of examples from manufacturers and CLECs to show that switch deployment takes far less time. For example, e.spire reports that switch deployment takes it "no longer than 28 weeks from the time a competitive provider places an order with its switch vendor to the time the switch is turned up." *UNE Fact Report: Switching* at I-29-30. At a minimum, using AT&T's figures, efforts to speed switch deployment have cut the maximum time to deploy by half since the Commission issued the *First Report and Order*, which assumed nine months to two years for switch deployment. *First Report and Order* at ¶ 411 and n. 911.

example, CLECs are using fewer switches than incumbent LECs to serve the same geographic area.

Focal Communications, for example, was "a start-up company with almost no business three years ago." Focal raised substantial venture capital and now has seven switches installed in seven major metro markets, and has additional facilities planned for the near future. Focal Comments at 4; MGC Comments at 1-2. And, Focal is just one of over 150 CLECs that have deployed switches.

The hallmark of local switching is clearly entry. The amount of entry that has taken place provides current alternatives to incumbent LEC switching and demonstrates that competitively significant self-provisioning can and is occurring.

C. The Arguments Of Certain CLECs That Incumbent LEC Switching Must Be Unbundled For Mass Market Competition To Flourish Are Factually Wrong And Inconsistent With The Act

AT&T, MCI WorldCom and some resellers argue that without unbundled access to incumbent LEC switching, CLECs' ability to compete for the mass market will be impaired. In reality, their argument is not for unbundled switching itself, it is for an entitlement to the entire incumbent LEC network at TELRIC prices via the UNE platform. It is extremely unlikely, for example, that AT&T intends to connect its cable loops to incumbent local switches.

This CLEC argument seems to have two parts, discussed in detail immediately below. It is true that, except for recent advances in cable telephony and wireless service, mass market competition has not advanced as far as competition for larger businesses.

The Commission has repeatedly recognized this fact.[35] The key reason for this, however, has nothing to do with unbundling or loop cut-overs,[36] it has to do with the potential for profit. Historical pricing levels for residential service do not present ready opportunities for substantial profits. This has led CLECs to focus on the lucrative business customers.[37] The relatively slower pace of mass market competition should be addressed directly through the Commission's universal service proceedings. Unbundling incumbent LEC switching or creating an entitlement to the UNE platform at TELRIC does not address the cause, and would not be a cure. The UNE Platform would create the dangers described by Justice Breyer of substituting pervasive regulation for competition.[38]

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[35] *See, e.g. In re Application of Teleport Communications Group, Inc., Transferor, and AT&T Corp., Transferee, for Consent to Transfer Control of Corporation's Holding Point-to-Point Microwave Licenses and Authorizations to Provide International Facilities-Based and Resold Communications Services*, CC Docket No. 98-24, *Memorandum Opinion and Order*, 13 FCC Rcd 15236, 15247 (1998) (*AT&T/Teleport Order*); *Bell Atlantic/NYNEX Order* at 20016; Kahn Declaration at ¶ 35.

[36] Neither AT&T nor MCI WorldCom object that the loop cut-over process impairs competition for larger business customers.

[37] Opening Statement of Michael K. Powell, Commissioner, FCC, Before the Senate Committee on Commerce, Science and Transportation, at 2, May 26, 1999("CLECs have chosen to enter high volume, low cost business markets (where the rates are inflated relative to costs) rather than residential markets").

[38] *See also* Kahn Declaration at ¶ 10.

1. The Total Number Of Incumbent LEC Switches Is Irrelevant To Determining If CLEC Opportunities To Compete Would Be Impaired Without Access To Unbundled Switching Under Section 251

AT&T argues that because incumbent LECs have many more switches than CLECs, a failure to unbundle every incumbent LEC switch in entire country would impair CLEC opportunities to compete. AT&T Comments at 86. A gross comparison of the number of incumbent LEC switches to the number of CLEC switches is not particularly useful to the Commission's statutory mandate to examine alternatives to incumbent LEC facilities and the ability of CLECs to self-provision. Switching alternatives must be examined in defined geographic markets. National numbers do not do this.

As would be expected, a more realistic comparison of the numbers of switches deployed by CLECs and incumbents LECs yields very different results. Attachment D sets out a comparison of the number of CLEC switches to BellSouth switches by cities and zones in BellSouth's serving territory. The zones used are the zones used for special access and switched transport pricing flexibility discussed in detail in BellSouth's Comments. BellSouth Comments at 56-57.

The comparison set out in Attachment D can not support *any* reasonable notion of impairment without the incumbent LEC's switch.[39] BellSouth has 30 operational switches in Atlanta. CLECs have 20 with 6 more planned for the near future. The story is really no different in smaller cities in Georgia, or any other state in BellSouth's region. In Albany, Georgia, BellSouth has 2 switches and CLECs have 1. In Augusta, Georgia, BellSouth has 3 switches and CLECs have 2. In Columbus, Georgia, BellSouth has 5 switches and CLECs have 4. Lumping together all the Zone 1 cities in Florida, yields 81 BellSouth switches, 36 operational CLEC switches and 23 CLEC switches planned for the near future. BellSouth has 16 switches in Charlotte. CLECs have 9 switches today with 6 planned for deployment. Soon there will be 15 CLEC switches in Charlotte and 16 BellSouth switches.

Ratios of CLEC to BellSouth switches like these are representative throughout BellSouth's serving territory, as Attachment D makes very clear. AT&T puts the ratio of incumbent LEC to CLEC switches at about 25 to 1 on a national basis. AT&T Comments at 86. Looking at markets, as rational economics demands, the ratio in BellSouth's region is as low as 1.5 to 1. Attachment D demonstrates that CLECs could not be legitimately viewed as impaired in Zone 1 and Zone 2 cities without unbundling the incumbent LEC switch under section 251(d)(2).

And, as Focal Communications points out, the existence of switch-based CLECs demonstrates that CLECs can self-provision even more local switching. Focal Communications Comments at 1-2. Over 160 CLECs have done so.

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[39] The comparison does not include long distance switches even though these switches can, and are, being used to provide local services. AT&T has claimed that outgoing local service is available in forty-nine states through its Digital Link service. AT&T Press Release available at <http://www.att.com/press/0798/980723.chb.html>.

In addition, switching should not be unbundled at least in part because CLECs "are providing their rapidly growing volume of services that compete with ILEC services by relying predominantly on their own switches." Kahn Declaration at ¶ 29. The flip side of CLEC success in relying on their own switches is that CLECs do not order switch ports from BellSouth even though they order local loops. As described in BellSouth's Comments, BellSouth has supplied CLECs with over 50,000 local loops, while CLECs have ordered less than 80 unbundled switch ports.

The large number of incumbent LEC switches is in part a function of the older technology that existed at the time incumbent LEC networks were designed. Modern networks would utilize far fewer switches to achieve the same coverage. AT&T and MCI WorldCom regularly point out in their state proceedings that an efficient forward-looking network would utilize fewer switches than the incumbent LEC networks do. CLECs routinely use switches to serve areas that incumbents use many switches to serve. *UNE Fact Report:Switching* at I. So comparing sheer numbers can be misleading.

The fact that substantial investment would be necessary for CLECs to provide switching for the entire United States mass market is true but fundamentally irrelevant to the question of whether unbundling incumbent LEC switching at cost-based prices is required to avoid impairing CLEC opportunities to compete in specific geographic markets. CLECs have proved that their ability to deploy switches is limited only by opportunities for profit. Where unbundled incumbent LEC switching is not available, CLECs will deploy their own.

Of course, in many geographic areas, CLECs have installed multiple switches and created alternatives to incumbent LEC switching. Incumbent LEC switching is not used

by those CLECs, and CLEC opportunities in those areas would not be impaired without access to cost-based incumbent LEC switching. Rather than removing an obstacle to competition, a Commission mandate to unbundle switching in those areas would penalize CLECs that have already invested in facilities-based competition, and remove incentives to CLEC investment in creating additional alternatives to the incumbent LEC switch. Focal Communications Comments at 1-2.

In remote rural areas, there may be no CLEC switching alternative today. But, where profits beckon, CLECs have proven that they can obtain funds, purchase and quickly successfully deploy switches.

2. The Loop Cut-Over Process Does Not Impair An Efficient CLEC's Meaningful Opportunity To Compete

AT&T argues that problems with the loop cutover process mean that CLECs cannot be expected to install their own switches to serve the mass market. AT&T Comments at 87. AT&T recites a litany of perceived problems with the "hot cut" process to support its complaint. Other CLECs that serve the mass market, like MGC Communications,, make no such complaints.

As Attachment E, the affidavit of W. Keith Milner demonstrates, BellSouth's loop cutover record shows the opposite of what AT&T claims. BellSouth's processes are quite capable of handling present and forecasted volumes of orders, and can be readily expanded to meet CLEC forecasted increases, whether in urban or rural markets. Milner Affidavit at ¶¶ 10, 12, 13. However, the successful handling of a volume of orders not only requires BellSouth's systems and personnel to be ready, but also those of the CLECs involved. AT&T has not been particularly forthcoming on this score. Milner Affidavit at ¶¶ 6-9.

BellSouth's record of performing loop cutovers is more than sufficient to support mass market offerings. In April, 1999, BellSouth cutover 70% of loop orders within 5 minutes. Over 88% were performed within 15 minutes. All orders were completed in an average of 6.94 minutes. The best CLEC's orders were complete in an average time of 3.30 minutes. Milner Affidavit at ¶ 10.

BellSouth processed four and on-half times as many loop cutovers for the CLEC with the most orders as it did for AT&T. AT&T's relatively small volume of orders limits the ability of their personnel to gain the needed experience to learn either AT&T's or BellSouth's processes well enough to handle orders in an error-free manner. Milner Affidavit at ¶ 10. In addition, AT&T's complaints about "hot cuts" generally involve cutovers of designed loops that are used to provide service to larger business customers. The process for cutting over designed loops is more complex than the process for mass market-type non-designed loops. Milner Affidavit at ¶ 11. It is not valid to assume that cutovers of true mass market customers would encounter the same issues as cutovers of designed loops for larger business customers. *Id.*

The loop cutover issue raised by AT&T is a red herring and cannot justify a requirement to unbundle incumbent LEC switching.

3. CLEC Opportunities To Compete Would Not Be Impaired Without Unbundling Incumbent LEC Switching Under Section 251(d)(2) In Zone 1 and Zone 2 Areas

The facts demonstrate that CLECs would not be impaired without access to incumbent LEC switching in Zone 1 and Zone 2 cities. CLECs generally have substantial numbers of switches in absolute terms in these cities and relative to the

number of switches BellSouth has. Additional self-provisioning is relatively cheap and quick.

The number of alternative switches deployed in these cities shows that CLEC opportunities to compete do not depend today on access to unbundled incumbent LEC switching, if they ever did. The relative ease of self-provisioning switching, as discussed above, and CLEC plans to deploy more switches, provide further proof that access to incumbent LEC switching does not meet any rational, limiting interpretation of section 251(d)(2)'s impair standard.

VII. LOOPS

CLECs have refused to join the issue of how to implement a rational limiting standard that addresses local loop unbundling in way that is faithful to section 251(d)(2). There are two issues here: local loops for larger business customers in urban areas and residential loops in areas where cable telephony is currently being offered.

Markets must be the unit of analysis for determining whether alternatives to incumbent LEC elements exist or can be constructed. *Kahn Declaration* at ¶¶ 12-18. On the large business front, incumbent LECs have presented the Commission with a record that allows a fact-based inquiry into whether CLECs have alternatives to incumbent LEC local loops or can effectively self-provision. These facts show that CLECs have deployed large numbers of local loops to serve business customers in urban areas. BellSouth Comments at 67-68; *UNE Fact Report: Loops* at I. The Commission understands that large businesses in urban areas make up a market separate from the mass market.[40]

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[40] *AT&T/Teleport Order* at 15257-8.

The Commission has found that CLECs are entering the larger business markets and deploying their own facilities. AT&T admits that "alternatives now exist" for these customers.[41] AT&T Comments at 15. MCI WorldCom, which trumpets the virtues of its end-to-end network for business customers, represents that it "self-provisions loops to its major business customers." MCI WorldCom Levine/McMurtrie Declaration at ¶ 10.

The argument for unbundling raised by CLECs here deliberately avoids the facts and rational economic analysis. Instead, they attempt to argue that because CLECs would be impaired in offering service to mass market customers in rural areas without unbundled local loops, loops to large businesses in urban areas ought to be unbundled. This makes no logical or economic sense. CLEC have put no facts in the record that would demonstrate that they would be impaired without access to incumbent LEC local loops for large business customers. In contrast, incumbent LECs have shown that CLECs have constructed their own alternative facilities, and can self-provision more. On this record, the Commission cannot find that CLECs would be impaired without incumbent LEC local loops for large business customers.[42]

Cable telephony is available today to many consumers in BellSouth's serving territory and will be even more broadly available by the end of this year.[43] Where telephony is actually being delivered over cable facilities, there can be no question that an

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[41] AT&T recently won a contract through the GSA to provide *local* service to federal agencies in 3 major U.S. cities. The contract is worth up to $680 million. Telecommunications Reports, "AT&T To Offer Federal Agencies Up to $680M of Local Services," May 24, 1999, at 39.

[42] BellSouth's Comments spell out why using 4-wire and higher capacity loops as a proxy for service to larger businesses would be accurate. BellSouth Comments at 63-64.

[43] Attachment C to BellSouth's Comments lists the many cities in BellSouth's region in which cable telephony will be available at least by the end of this year. Cable telephony is already available in a number of these cities, including Atlanta.

alternative to the incumbent LEC local loop exists.[44] Not all cable systems are telephony-ready today. "Only" 26 percent of TCI's systems were upgraded for two-way communications at the end of last year.[45] AT&T is already offering cable telephony.[46]

Where a cable operator has upgraded cable facilities and those facilities are supporting local exchange service, there is unquestionably an alternative to the incumbent local loop. Unbundling under section 251(d)(2) is not appropriate in those circumstances. Regulatory parity also requires that incumbent LEC loops no longer be subject to an unbundling requirement that is not borne by cable loops delivering competing service in the same area.

Although AT&T's Comments also dismiss wireless service as an alternative to the local loop, its One-Rate advertisements say the opposite. The Commission continues to "note growing evidence that some consumers are substituting wireless for wireline service."[47] Where wireless networks provide an alternative to the wireline local loop, the local loop no longer meets section 251(d)(2)'s requirements.

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[44] In what would be something of a revelation on Wall Street, AT&T claims that "cable telephony technology" is not a "realistic alternative[]" to incumbent LEC local service. AT&T Comments at 67. AT&T is attributing very substantial revenue growth to its cable telephony offerings to analysts, and predicts 30% penetration of local telephony within 5 years. *See, e.g.,* Karim Zia, "AT&T Comes to the Table," DLJ Securities (April 23, 1999); Eric Strumingher, "AT&T Reiterate Buy," PaineWebber (April 26, 1999)("Telephony assets account for more than a third of management's growth estimate for the cable assets").

[45] AT&T Comments at 71.

[46] Deborah Solomon, "AT&T Uses Cable Lines to Offer Local Phone Calls in Fremont," S.F. Chronicle, May 20, 1999 at B1.

[47] *In the Matter of Truth-in-Billing and Billing Format*, First Report And Order And Further Notice of Proposed Rulemaking, CC Docket No. 98-170, rel. May 11, 1999, at ¶ 69 (citation omitted).

VIII. OPERATOR SERVICES AND DIRECTORY ASSISTANCE

MGC is a facilities-based carrier that is utilizing over 80,000 unbundled loops to provide service to residential and small business customers in several states. MGC Comments at 4-5. Its experience has led it to conclude that "CLECs may purchase operator services and directory assistance services from a number of vendors offering cost effective national-in-scope alternatives to the ILECS product offering.... Sufficient competitive markets exist for this product and it should therefore be retired as a UNE." MGC Comments at 31; Public Utilities Commission of Ohio at 12. ALTS does not request unbundling of OS/DA. AT&T and Sprint concede that the need to unbundle either operator services or directory assistance is a close call.

A number of CLECs claim that incumbent LEC operator services and directory assistance services must be unbundled until non-discriminatory access to directory listing information is available. The fact is that BellSouth now provides non-discriminatory access to directory listings under FCC rules.

Perhaps more importantly for section 251(d)(2) analysis, CLECs have made absolutely no attempt to address directly the question of whether they are impaired without unbundled access to incumbent LEC operator services and directory assistance services. There are no facts here to support bare assertions that incumbent LEC service is more accurate. Neither is there any analysis to suggest that any quality difference impairs any CLEC.

The market for operator services and directory assistance is competitive and provides alternatives to CLECs that they are using today to compete with incumbent

LECs. *UNE Fact Report: Operator Services and Directory Assistance* at VI. Because the record contains no factual information to suggest otherwise, services and directory assistance services may not be unbundled under section 251(d)(2).

IX. CONCLUSION

The Commission should adopt a rational, limiting approach to evaluating impairment under section 251(d)(2). That approach should be founded on maximizing consumer welfare. To do that, the Commission should apply well-accepted economic principles that require markets to be defined and competition and alternatives to be analyzed, consistent with the Court's opinion. By looking to the actual market facts in the record, the Commission can identify the limited circumstances in which creating an entitlement to unbundled incumbent LEC elements would benefit consumers.

BELLSOUTH CORPORATION

William B. Barfield
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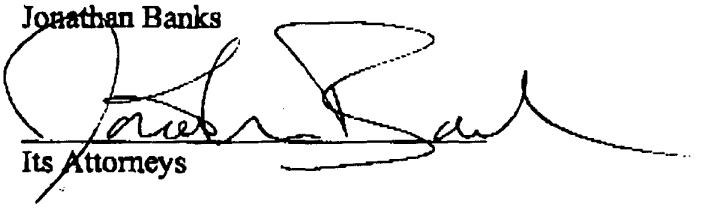

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CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of June, 1999 served the following parties to this action with a copy of the foregoing **BELLSOUTH'S REPLY COMMENTS** by hand delivery (as indicated by ***) or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties shown on the listing below.

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